



OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information; Automated Worker Surveillance and Management

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Notice of request for information (RFI).

SUMMARY: Employers are increasingly using automated systems to monitor, manage, and evaluate their workers. These systems may allow employers to manage supply chains, improve health and safety, or make other informed business decisions. At the same time, applications of surveillance and monitoring systems can also pose risks to workers, including to their health and safety, equal employment opportunities, privacy, ability to meet critical needs, access to workplace accommodations, and exercise of workplace and labor rights, including their rights to form or join a labor union. The White House Office of Science and Technology Policy (OSTP) seeks comments from the public to better understand automated surveillance and management of workers, including its prevalence, purposes, deployment, and impacts, as well as opportunities for Federal agencies to work with employers, workers, and other stakeholders to ensure that these systems do not undermine workers' rights, opportunities, access, health, or safety.

DATES: Interested persons and organizations are invited to submit comments on or before 5 p.m. ET, June 15, 2023.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov*, please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. OSTP will not accept comments by fax, or comments submitted after the comment period closes. To ensure that OSTP does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on how to use *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “FAQ” (<https://www.regulations.gov/faq>).

Privacy Note: OSTP’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available. OSTP requests that no proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI.

Instructions: Response to this RFI is voluntary. Respondents may answer as many or as few questions as they wish. Responses containing references, studies, research, and other empirical data that are not widely published should include copies of or electronic links to the referenced materials. Any information obtained from this RFI is intended to be used by the government on a non-attribution basis for planning and strategy development. OSTP will not respond to individual submissions. A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed. This RFI is not accepting applications for financial assistance or financial incentives. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included in the body of your response. Respondents interested in submitting anonymous comments should use the option on www.regulations.gov/.

FOR FURTHER INFORMATION CONTACT: Alan Mislove, Assistant Director for Data and Democracy, workersurveillance@ostp.eop.gov, 202-456-4444.

SUPPLEMENTARY INFORMATION: *Background:* Employers are increasingly using automated systems to monitor, manage, and evaluate their workers—both on and off the job. According to a 2022 investigation by the *New York Times*, eight of the ten largest private U.S. employers track the productivity metrics of individual workers.¹ Use of automated surveillance and management systems has increased with the spread of remote work during the pandemic, and now often extends to workers' homes.² Private-sector research suggests that the percentage of large employers using automated tools to track their workforce may have doubled since the beginning of the pandemic to some 60%.³

Automated worker surveillance and management systems may track workers' location, pace or quality of work, communications (e.g., text, chats, emails, social media), interactions with other workers or customers, and computer activity. Such surveillance can be accomplished through a variety of techniques, ranging from software on workers' computers to dedicated electronic devices that workers wear or carry on their person. The market for these technologies and systems has greatly expanded in recent years, and a number of vendors are now developing products to help employers electronically monitor and manage their workers in a variety of contexts.

Examples of applications of automated surveillance and management of workers that have been reported in the press include:

- Warehouse workers who are tracked by whether they are actively moving products
- Grocery store cashiers who are monitored on the speed of their transactions with customers

¹ <https://www.yahoo.com/video/bosses-giving-return-office-fight-191121126.html>.

² <https://www.shrm.org/hr-today/news/all-things-work/pages/monitoring-remote-workers.aspx>.

³ <https://www.gartner.com/en/articles/the-right-way-to-monitor-your-employee-productivity>.

- Office workers whose keystrokes, chats, emails, and other communications are collected and monitored
- Lawyers whose computer cameras track whether their eyes are actively focused on the screen
- Call center workers whose calls are monitored by a computer that judges the emotional state of customers
- Copywriters whose computers automatically take screenshots of their activity to track which applications they are using
- Home healthcare workers whose locations are monitored by an app that verifies patient visits
- Nurses whose time on task and location are tracked through radio frequency identification (RFID) tags in identification badges
- Delivery or rideshare drivers whose vehicles track their location, speed, and driving behavior
- Long-haul truckers whose eye movements are monitored and locations tracked
- Fast food workers whose pace of work in preparing meals is tracked and reported
- Teachers whose lessons delivered remotely online are recorded and analyzed electronically

These systems may allow employers to more closely monitor worker performance; protect public health and safety; make decisions about promotion, discipline, or termination; or manage work assignments, schedules, and supply chains. At the same time, applications of automated surveillance and management systems can also pose risks to workers and even violate labor and employment laws.⁴ Emerging research suggests

⁴ See for instance, <https://laborcenter.berkeley.edu/wp-content/uploads/2021/11/Data-and-Algorithms-at-Work.pdf>, <https://cdt.org/insights/report-warning-bossware-may-be-hazardous-to-your-health/>, and <https://equitablegrowth.org/research-paper/workplace-surveillance-is-becoming-the-new-normal-for-u-s-workers/>.

that certain applications of these systems may undermine the quality of work; workers' rights to a safe and healthy workplace; compensation for time worked; labor market competition; and workers' ability to organize and work collectively with their coworkers to improve working conditions, including through labor unions. Certain applications of these systems—when paired with decisions about working conditions, promotion, discipline, or termination—may also treat otherwise similar workers differently on the basis of their race, ethnicity, gender, religion, age, national origin, health or disability, or other protected status. Some systems may also violate antitrust and privacy laws, for instance, if employers use technologies to artificially reduce wages.

Automated worker surveillance and management can also cause and exacerbate disabilities and interfere with legal protections for those with disabilities. Automated worker surveillance and management systems can potentially put workers at risk for physical injury and mental health distress that can cause or exacerbate anxiety, depression, cognitive disability, and trauma responses; interfere with legally-protected workplace accommodations that enable individuals with disabilities to participate in the workforce; and reveal workers' otherwise-undisclosed disabilities to employers.

In 2022, the White House Office of Science and Technology Policy released the *Blueprint for an AI Bill of Rights* (“Blueprint”), which stated that individuals “should be free from unchecked surveillance.”⁵ The Blueprint noted that continuous surveillance can pose harms to workers, using the example of electronic monitoring intended to stymie workers' efforts to organize a labor union. Consistent with the Blueprint, the Office of Science and Technology Policy seeks to further study the use of automated surveillance and management systems in the workplace, including their prevalence, impacts, and deployment, as well as opportunities for Federal agencies to work together with

⁵ <https://www.whitehouse.gov/ostp/ai-bill-of-rights/data-privacy-2/>.

employers and workers to ensure that these systems do not undermine workers' rights or their safety.

This focus on automated surveillance and management in the workplace is also consistent with the Administration's commitment to ensuring that all workers have access to high-quality, well-paying jobs, including jobs with opportunities to organize and bargain collectively with their employers through labor unions, as articulated in the Executive Order 14025 (*Worker Organizing and Empowerment*)⁶ and through a competitive market for their labor, as articulated in Executive Order 14036 (*Promoting Competition in the American Economy*).⁷ This initiative advances the Biden-Harris Administration's historic commitment to racial equity and support for underserved communities, by investigating whether automated surveillance and management systems "contribute to unjustified different treatment or impacts," as articulated in Executive Order 14091 (*Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*) as well as the Administration's call for robust protections for Americans' privacy.

Request for Comment: This request for information seeks input from the public on the prevalence, uses and purposes, and deployment of automated worker surveillance and management systems, including impacts of these systems on workers' legal rights and lives. It includes workers' physical and mental health; privacy, dignity, and autonomy; and ability to exercise workplace rights, including rights to collective action, pay, reasonable accommodation, health, and safety, and freedom from retaliation, discrimination, and harassment. It also seeks input on how employers may share data

⁶ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/04/26/executive-order-on-worker-organizing-and-empowerment/>.

⁷ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

collected through these surveillance applications and how worker surveillance may contribute to unfair competition between firms.

This RFI focuses on automated surveillance and management by employers that may track workers' locations, pace of work, performance or output, compliance with policy or regulations, or social media activity; their emails, texts, chats, phone calls, and other communications; or other similar measures. Such surveillance may take place during or outside of work hours, and on or off the worksite. This request for information also covers workers in traditional employment relationships (i.e., W-2 employment) as well as other employment relationships, such as independent contractors and gig economy workers.

OSTP is particularly interested in hearing from:

- Workers who have experienced automated surveillance and management (including workers of color, low-paid workers, immigrant workers, and workers with disabilities);
- Worker organizations (including worker advocacy groups, worker centers, labor unions, and workplace legal services providers);
- Civil rights and privacy organizations;
- Employers (including for-profit, non-profit, and government employers) that are using automated surveillance and management systems or considering using such systems;
- Platforms, crowdsourcing websites, transportation network companies, ride-hailing services, and other entities that match workers with opportunities to generate income;
- Trade and business associations representing employers;
- Developers and vendors developing or selling automated surveillance or management systems;

- Researchers (including researchers using both qualitative and quantitative methods to understand the use, prevalence, benefits and risks, and impacts of automated surveillance and management systems on individuals and society); and
- State, Tribal, local, and territorial governments.

To assist commenters in developing responses, OSTP has crafted the questions below that commenters may answer. Respondents may provide information for one or more of the topics below, as desired. However, OSTP welcomes members of the public to submit any personal experiences, data, information, and research relating to the use and impact of automated worker surveillance and management systems. Please do not to include personally identifying information in the body of your response.

1. If you are a worker or organization representing workers (such as a worker center, union, or legal services provider), please tell us about your experiences with automated worker surveillance and management systems or the experiences of the workers you interact with, including:
 - a. The type of work you do (e.g., describe the relevant job, employer, and industry);
 - b. Whether you are a member of a labor union;
 - c. The type of automated surveillance or management you have experienced, including the location of the monitoring technology (such as an app you had to use or download; a device you had to use, carry, or wear; or a camera that monitors you);
 - d. Whether the automated surveillance or management was used during a labor organizing drive;
 - e. Whether and when your employer informed you about their use of automated worker surveillance and management systems;

- f. Whether you (or, if relevant, your representative, like a labor union) have any input or control over how, where, and over what automated surveillance occurs;
- g. Whether you know how the data generated by surveillance is used for management or other purposes (including purposes related to employment or labor market competition);
- h. Whether you (or, if relevant, your representative, like a labor union) have any visibility into the data collected on you or how it is used, including whether data on you collected by surveillance can be shared with other companies, trade groups, or third parties;
- i. How the use of automated surveillance and management systems has changed how you do your job or how your employer treated you at your job;
- j. Whether your employer has used information from an automated surveillance and management system in support of any discipline against you—and if so, what the action was, how and when you were informed, and what information was provided to you or your representative (such as a labor union);
- k. How automated surveillance and management has affected you—whether positively or negatively—including any economic, safety, physical, mental, and emotional impacts;
- l. How automated surveillance and management systems have affected your workplace rights, including rights around collective action, labor organizing, collective bargaining, pay, reasonable accommodations, health and safety, discrimination, and harassment—or your expectation of retaliation when exercising these rights;
- m. How these systems have impacted your non-working hours, personal time, or the privacy of other members of your household;

- n. If you are disabled or have a health condition, how automated surveillance and management systems have impacted or may impact your use of reasonable accommodations; such as assistive technology or accessibility features of software or breaks, or affected your ability to keep information about your condition private from your employer, supervisor, or coworkers;
 - o. If you are disabled or have a health condition, how automated surveillance and management systems have affected performance reviews or other management activities, or concerns about how these systems may affect performance reviews or how your management treats you; and
 - p. Whether you work for an employer that receives Federal funds (for instance, as a Federal contractor).
2. If you are an employer or organization representing employers, please tell us about your experiences implementing or using automated worker surveillance and management systems, including:
- a. The type of business you are in, or represent, including your industry and roughly how many workers you employ;
 - b. Whether any of your employees are represented by a labor union;
 - c. The types of automated worker surveillance and management systems your business has implemented or is considering implementing;
 - d. The purposes for which your business decided to implement automated worker surveillance and management systems, such as safety and health, productivity, competition, liability or insurance, compliance, or resource and worker management;
 - e. How your business decided to use specific automated worker surveillance and management systems, including decisions not to use particular products or types of systems, to limit their scope, and relevant training;

- f. In what ways your business uses the information collected through automated surveillance and management systems, such as for management, human resources, and business operations, including whether the information is sold or shared with other businesses or otherwise influenced by other businesses' activities;
- g. Any steps your business has taken to solicit or incorporate worker input into how automated worker surveillance and management systems are adopted, implemented, and used; whether workers may opt out of such systems (and any consequences for doing so); and how generated data is used or shared with other parties;
- h. Any involvement of third parties (such as vendors) in collecting or maintaining information on workers and any control retained by the employer;
- i. Any steps you have taken to ensure that the use or sharing of automated worker surveillance and management systems does not infringe on workers' rights;
- j. How you decide the categories of workers for whom you deploy automated worker surveillance and management systems (e.g., managerial versus non-managerial workers);
- k. Any policies or protocols adopted to govern the use of automated worker surveillance and management systems or the data they produce; and

Whether your organization receives Federal funds.

3. If you are a technology developer or vendor, please tell us about your experience developing or distributing automated worker surveillance and management systems, including:

- a. The purposes for which employers adopt your products and how they deploy these products;

- b. How the impact, performance, and efficacy of your products is audited and validated by you, employers, and workers;
- c. How you and the users of your products manage data collection, storage, and maintenance, including access to data by third parties;
- d. Whether you provide guidance to employers on your products and their appropriate use, including guidance on notifying workers about the use of technology, and offering opportunities for workers to consent to or opt out of data collection;
- e. Whether you engage with employers to help them implement your products in ways that protect workers' rights, health, and safety—or otherwise take steps to help protect workers who will engage with your products; and
- f. Any steps you have taken to ensure that the use of automated worker surveillance and management systems does not infringe on workers' rights.

4. Data and research-related questions we are interested in include:

- a. What data and evidence exist on the prevalence of automated worker surveillance and management systems across different industries, occupations, and regions, including changes over time?
- b. What data and evidence exist on the impact of automated worker surveillance and management systems on workers, including workers' pay, benefits, and employment, physical and mental health, and ability to exercise workplace rights?
- c. What data and evidence exist on the impact of automated worker surveillance and management systems on labor rights, including workers' abilities to form and join unions and bargain collectively with their employers?
- d. What data and evidence exist on how the impact of automated worker surveillance and management systems differs across groups of workers,

including based on characteristics such as race, national origin, sex, age, disability, religion, or health status?

- e. What data or evidence exists on whether automated worker surveillance and management systems are being used for discriminatory purposes or resulting in discrimination?
 - f. What data and evidence exist on whether automated workers surveillance and management systems impact employers' ability to recruit and retain workers?
 - g. What data or evidence exists on how the provision of reasonable accommodations is accounted for in the design and operation of automated worker surveillance and management systems?
 - h. What data and evidence exist on why employers decide to adopt automated worker surveillance and management systems?
 - i. Are there any existing or new systems that aggregate worker surveillance data across multiple employers?
 - j. What are new or emergent automated worker surveillance and management systems—or new and emergent uses of existing technologies—that Federal agencies should be tracking?
 - k. Where might further research, including by the Federal government, be helpful in understanding the prevalence and impact of automated worker surveillance and management systems?
5. Last, we are especially interested in the following questions about policies, practices, or standards that could protect workers:
- a. What guidelines, standards, or best practices might inform the design of automated worker surveillance and management systems to protect workers' rights?

- b. Are there policy approaches to regulating automated worker surveillance and management systems from State, Tribal, territorial, or local governments or other countries that Federal agencies could learn from?
- c. What policies or actions should Federal agencies consider to protect workers' rights and wellbeing as automated worker surveillance and management systems are developed and deployed, including through regulations, enforcement, contracting, and grantmaking?

Dated: April 28, 2023.

Stacy Murphy,

Deputy Chief Operations Officer/Security Officer.

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